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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,623	03/22/2002	Eberhard Fritz	3993.003	4998

7590
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02/11/2004

EXAMINER

GILBERT, SAMUEL G

ART UNIT PAPER NUMBER

3736

DATE MAILED: 02/11/2004

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/018,623

Applicant(s)

FRITZ ET AL.

Examiner

Samuel G Gilbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26-30 and 47 is/are allowed.
- 6) ☒ Claim(s) 23-25, 31-46 and 48-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/3/03 has been entered. Supplemental amendment D filed 12/5/03 has also been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 34, 41, 51 and 52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 34 – lines 9/10, it is unclear how only one treating element is spaced from each other. It seems that spacing the elements requires at least two elements.

Claim 41 – in line 6/7, “at least one treating element” has been set forth while in lines 8/9 “said at least two” are set forth. Lines 6/7 should be amended to read “at least two”.

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 23, 24, 25, 31, 32, 38, 40, 43-45, 50 and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Tokita et al (4584991).

Tokita teaches treating elements –28- the treating elements are strung on wire like member –32- and plastic coating –34- retains the spacing and provides means for containment. Further the seeds are placed in flexible elongate container –36-. The flexible tube provides a deflection site as shown in figure 1 where the tube bends. Since the tube bends over the entire length of the seeds there is inherently a deflection site between the seeds. Applicants attention is invited to figure 1 and column 4 lines 42-62.

Claim 24 – tube –36- is a hollow cylinder.

Claim 25 – tube –36- is flexible see column 4 line 61.

Claim 31 – the beads as set forth by definition would have rounded ends.

Claim 32 – the wire like member –32- is a spacer.

Claim 38 the examiner is taking element -20- as a catheter.

Claim 40 – element –40- is a containment vessel.

Claims 50 – element –20- includes a plurality of lumens.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 34, 36, 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tokita et al. (4584991).

Tokita teaches a device as claimed but does not indicate that treating elements are fixed to the wall of the container. The applicant is given official notice that connecting the treating elements to the wall of the container is old and well known in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to connect the treating elements to the wall of the container to provide a device in which the position of the treating elements will not shift in relation to container to provide more accurate positioning of the seeds as is well known in the medical arts.

Claims 36, 37, 39, 48 – the exact radiation source used by Tokita is not set forth. The applicant has not set forth any criticality in the exact source to be used. It is generally accepted in the medical arts that the radiation source is generally selected based on the therapy to be performed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use any of the claimed sources as known radiation sources.

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Claim 33, 35 42 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tokita et al (4584991) in view of Liprie (5857956). Tokita teaches a device as claimed but uses a wire like member for spacers not sphere shaped members. Liprie teaches the use of sphere shaped members –705- for spacers to improve the flexibility of the device. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the sphere and wire connectors of Liprie in place of the wire like member of Tokita to provide increased flexibility as taught by Liprie.

Claim 35 – Tokita teaches using plastic for a containment device Liprie teaches the use of a metal for a containment device. The use of a metal for the plastic would have been a substitution of functionally equivalent elements.

Claim 42 – the device of Liprie teaches the use of a fluoroscopy device. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a fluoroscopic device as taught by Liprie with the device of Tokita to provide a visual indication of the placement of the devices as is old and well known in the medical arts.

Claim 46 and 49 – Tokita teaches a device as claimed but does not teach the use of a transfer wire. Liprie teaches a device including a transfer wire –430-. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the transfer wire of Liprie with the device of Tokita to provide a backbone for the insertion and removal of the device of Tokita as taught by Liprie to provide strength to the device of Tokita.

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Allowable Subject Matter

Claims 26-30 and 47 are allowed.

Claims 41, 51 and 52 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

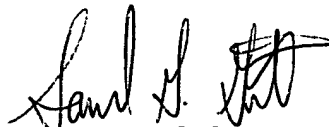
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent 6,179,768 teaches a related delivery device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G Gilbert whose telephone number is 703-308-3553. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 703-308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-308-0758.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Samuel G Gilbert
Primary Examiner
Art Unit 3736

sgg